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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 717

ROSE K. JOYCE,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO,
a Body Politic and Corporate

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT.

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF IILLINOIS, FIRST DISTRICT.

To the Honorable, the Justices
of the Supreme Court of the United States:

Your petitioner, Rose K. Joyce, respectfully shows to the court that she is a citizezn of the United State, native born, and a resident of the City of Chicago, County of Cook, and State of Illinois; that from 1925 to February 28, 1942,

she was a teacher in the public schools of the City of Chicago under jurisdiction of the Board of Education of said city and during the last ten years of her service was a high school teacher in the Hyde Park High School.

That the judgment here sought to have reviewed was entered by the Appellate Court of Illinois, First District, which judgment became final in said Appellate Court when the Supreme Court of Illinois, the highest judicial tribunal of that State, denied a petition for leave to appeal thereto from said Appellate Court.

The action below was a certiorari in the Circuit Court of Cook County, Illinois, to quash a record of the Board of Education of the City of Chicago by which petitioner was dismissed from service as a high school teacher upon charges of alleged un-American statements said to have been made in the class room and because of a letter written to one of petitioner's pupils; the trial court refused to quash the record, quashed the writ instead, the said Appellate Court affirmed the trial court, and the Supreme Court of Illinois denied leave to appeal.

The Appellate Court of Illinois affirmed the judgment on the fact of the letter alone.

Summary Statement of the Matter Involved.

Petitioner was born in Chicago, Illinois, on June 16, 1903 and graduated from the Hyde Park High School in 1921. She attended the University of Chicago until 1924 and was there given a degree of Bachelor of Philosophy. She graduated from Chicago Normal College in June, 1925; and in 1936 was given a Master's degree by Loyola University, where on sabbatical leave, she studied philosophy.

Petitioner commenced teaching in the Chicago Schools in 1925. Her first assignment was in Beaubien Elementary School where she taught for five years; then one year in Marshall High School; in 1933 petitioner went to Hyde Park High School where she taught the subjects of Latin American, Medieval and General History until February 28, 1942, when she was suspended from service (Abst. 91).

On February 28, 1942 petitioner received a communication from the Superintendent of Schools of said city advising her that she was suspended pending trial of charges filed against her by him (Abst. 19-20).

The Superintendent of Schools on February 28, 1942 reported his action to the Board of Education in which he stated that "the services of Rose K. Joyce, a teacher at the Hyde Park High School are unsatisfactory," and filed therewith his charges against petitioner as follows:

> "That said Rose K. Joyce is guilty of conduct unbecoming a school teacher in the Chicago Public Schools" (Abst. 19).

Thereafter the Board of Education on March 4, 1942 approved the action of the Superintendent of Schools and referred the charges so preferred to the General Committee (all members) as a trial committee to hear the evidence and report its conclusions (Abst. 130).

On April 1, 1942 petitioner was served with notice of hearing with a further specification of the charges against petitioner stating again that petitioner was "guilty of conduct unbecoming a teacher in the Chicago Public Schools" for the following reasons:

> "1. That she made un-American statements in her class room derrogatory to the United States government. 2. That she wrote a letter to a former student of hers who failed to register in accordance with the Selective Service Proclamation of the President of the United States congratulating him on his 'courageous and idealistic stand'' (Abst. 21).

Petitioner was served with a copy of the charges which were tried by the general committee consisting of the president and all other members.

At the close of the evidence in support of the charge petitioner moved to dismiss the charges which was overruled.

The general committee reported to the Board its findings sustaining the charges and recommended that petitioner be dismissed from the service.

On hearing the report the Board on June 25, 1942, adopted the report and concurred in the findings and recommendations of the committee, and petitioner was thereby dismissed from her said position.

On August 14, 1942, petitioner filed in the Circuit Court of Cook County her petition for the writ of certiorari to review the record of said Board of Education.

The Complaint In the Circuit Court of Cook County For the Writ of Certiorari.

The complaint for Certiorari filed in the Circuit Court of Cook County by which it was sought to quash the record of the Board of Education, after alleging the pertinent facts, charges as follows:

> 24. That said action and decision of respondent is final under the terms of said statute of Illinois; and

that plaintiff has no other relief in the premises except by this complaint.

25. That said finding, decision and order of respondent violates plaintiff's rights as preserved and guaranteed by article 2, sections 2 and 4 of the Constitution of Illinois (1870) as follows: (2) "No person shall be deprived of life, liberty or property without due process of law." (b) "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of this liberty * * *".

26. That said finding, decision and order of respondent violates the 1st section of the Fourteenth amendment to the Constitution of the United States which provides that: * * * "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

29. That it appears from said proceedings before respondent that plaintiff was capriciously and arbitriarily suspended for a pretended "conduct unbecoming a school teacher in Chicago" without setting forth what, in the opinion of said Superintendent of Schools, construes to be "conduct unbecoming a school teacher in Chicago"; that thereafter said Superintendent of Schools pretended to state what such "conduct unbecoming a teacher in the Chicago public schools" means by charging that plaintiff (1) "made un-American statements in her class room derogatory to the United States Government," without specifying such alleged "un-American statements", and (2) wrote a letter congratulating a former student, who had refused to register for the draft because of conscientious objections congratulating him on his "courageous and idealistic stand", but without specifying wherein and how such action of plaintiff is either unbecoming a teacher or un-American is otherwise wrong.

30. That it appears from said proceedings before respondent that plaintiff and the history teachers of respondent were and are subject to the whims and caprices of members of respondent as to what constitutes patriotism, as to what shall be and shall not be taught, so that plaintiff and said teachers must teach not the true facts of history, but the brand of history, which might meet with the approval of the Board of respondent then in office.

10. That the record in said trial proceedings shows that in trying said charges set out in Exhibit 2, plaintiff has been deprived of a substantial and valuable right, to-wit: her employment as a teacher, as aforesaid without due process of law, that she has been deprived of her said employment in violation of the statute of the State of Illinois hereinbefore referred to, by the terms whereof her tenure of said employment is secured, or purports to be secured, that the deprivation of her said employment, the same being a valuable property right, constitutes the deprivation of her property without due process of law.

11. More particularly plaintiff shows that the acts of respondent in the premises are in violation of the Constitution of the State of Illinois and of the United States, which Constitutions guarantee to plaintiff that she shall not be deprived of property without due process of law, in the following respects, all of which will more fully appear upon an inspection of the record of the proceeding had in the premises by respondent:

a. That said purported and pretended charges do not constitute "cause" for removal within the meaning of the statute;

b. That said purported and pretended charges are vague, informal, insufficient and are too indefinite and uncertain to comply with the statutory requirement pertaining to "written charges", hereinabove referred to;

c. That said supposed charges do not contain any averment of fact but are conclusions of the pleader, who prepared said supposed charges;

d. That said supposed charges do not state or set forth any violation on the part of the plaintiff of any rule, regulation, or by-law of respondent;

f. That no competent evidence, and no evidence of any weight was received in support of said charges upon said trial;

g. That the findings of said trial Committee and the order of respondent are based on no substantial evidence in the record;

h. That the findings of the so-called "Trial Committee" do not constitute "cause" for removal within the meaning of the aboresaid statute;

i. That the findings of said "Trial Committee" are based upon the unreliable evidence of self-contradicted witnesses;

j. That the findings of said "Trial Committee" consisted of mere conclusions based upon mere conclusions and opinions of immature children relating to the study of historical events as discussed in classes months prior to the date of the hearing;

k. That the report of said "Trial Committee" and the findings thereof, as well as the findings of respondent with reference to said charges, consist wholly of conclusions, and contain no findings of fact upon which could be predicated the action of respondent in discharging plaintiff from her said employment.

The writ was granted and the Board of Education filed its return to said writ and the entire record of said Board, including the evidence heard, was certified to the Circuit Court of Cook County.

The Return of the Board of Education to the Writ for Certiorari.

The Board of Education filed as its return to said writ of certiorari a complete transcript of the record of the proceedings including a transcript of the testimony in the

matter of the charges, investigation and dismissal of petitioner from the teaching force of the Board of Education.

Petitioner then moved to quash said record, and the Board of Education moved to quash the writ. The motion to quash the record was denied and the motion to quash the writ was allowed and the petition dismissed at plaintiff's costs (Abst. 146).

Petitioner then perfected an appeal to the Appellate Court of Illinois for the First District thereof. The cause was there argued and the judgment of the Circuit Court of Cook County was affirmed.

A petition for leave to appeal was filed in the Supreme Court of Illinois and denied by that Court September 12, 1945, thereby making the judgment of the Appellate Court final.

Concerning the qualifications of petitioner as a teacher.

No question arises upon this record of the qualifications of petitioner as a high school teacher. At the period in question petitioner was teaching Latin-American history. She had been taught by Dr. Tryon of the University of Chicago that open discussion of current events in classes was a good method of teaching history and that method was practiced by petitioner. During the period prior to December 8, 1941 there had been open discussions in class on the questions of isolation and intervention and pupils had frequently voiced their opinions on these subjects (Abst. 93).

That the methods of petitioner in teaching was highly satisfactory is evidenced by a letter written to petitioner

by W. H. Johnson, Superintendent of schools, carbon copies of which were sent to the District Superintendent and to the principal of the school. The letter written on June 10, 1941 is as follows:

"Dear Mrs. Joyce:

"May I congratulate you on your unique method of teaching students about the Senate and its activities! The intense interest that such a project elicits from high school youngsters almost insures its effectiveness from the outset. And when it is handled as intelligently and efficiently as you have handled it, there can be no doubt of its effectiveness.

"Be assured that I am as grateful for the originality and enthusiasm of your teaching as I am for its thoroughness, because your possession of these qualities means that you are not only instructing your students, but also inspiring them. You are fulfilling your duties as a teacher most admirably, Mrs. Joyce. May you have continued success in the future!" (Abst. 92).

Excitement over Pearl Harbor and Declaration of War.

Charge 1, that petitioner made Un-American statements in her class room derogatory to the United States Government grew out of the historical observations made in her classes on Monday, December 8, 1941. The attack on Pearl Harbor, the President's speech to Congress, the declaration of War, caused great excitement in the Hyde Park High School. It was in this atmosphere that petitioner's observations were made and received various interpretations, as various as their were students in the classes.

On the day following Pearl Harbor there was great excitement in the history classes. Petitioner sent home for her radio and it was tuned in to hear the President's ad-

dress to Congress. The open forum type of discussion and frankness in statement of historical facts and the national viewpoints on immigration and related subjects led to the complaints that petitioner had made un-American statements in class, and the very type of procedure praised by the Superintendent of Schools in June led to the complaints against petitioner in December. Following the class incidents on December 8, 1941, petitioner was called to the principal's office on December 9 and told that he had been asked by Mrs. Mellin (a member of the Board of Education) if she had made any un-American statements in class and petitioner told him that she did not think she had (Abst. 99). Petitioner continued teaching without incident until suspended on February 28, 1942.

The Letter to David Nyvall.

In a morning newspaper appearing in the evening of February 17, 1942 an article appeared about one, David Nyvall who had been in petitioners classes. Nyvall had failed to register under the Selective Service Act and had been taken into custody by the F. B. I.. The arrest was noticed in the public press which petitioner saw, and, recognizing her former pupil was in trouble, wrote to him a personal letter directed to his home address. Obviously he gave out some expressions to the press as to his objections to war. The article was not put in evidence but it must have had in it some expressions about war being mass murder as that was the interpretation put on it by petitioner (Abst. 119). The letter was inteercepted by the F.B.I. and turned over to David's father. The envelope was postmarked February 18, 1942, 10:30 A.M. (Abst. 60).

David's father lived at 5450 Blackstone Avenue (Abst. 125), and David lived at 1416 East 57th Street (Abst. 60).

The letter is as follows:

> "Dear David: Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation; war, which in reality is mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce."

Petitioner testified that she congratulated him upon his courage for standing up for what he thought was right, his courageous and idealistic stand and his attitude and was not congratulating him on his refusal to register (Abst. 59, 118, 126).

Petitioner did not publicize her letter.

About a week after the letter was written to David Nyvall, a newspaper reporter called on petitioner at the school and asked petitioner if she had written a letter to David Nyvall and she said that she had, and under questioning said that she had congratulated him on his courage to stand for what he thought was right. The call of the reporter was a surprise to petitioner (Abst. 126). When the news write up appeared in the press it conveyed the idea that petitioner had congratulated David upon his refusal to register. One paper, however, said the congratulations were offered on the display by David of his convictions (Abst. 127).

Following the publicity as to the letter the Superintendent of Schools on February 28, 1942 suspended petitioner and filed charges against her stating, without any supporting facts, that petitioner was "guilty of conduct unbecoming a school teacher." (Abst. 19).

The record does not state, but it is assumed that the

order of suspension was issued following the appearance of the newspaper items as the newspaper reporter found petitioner at work at school on the day he appeared to question petitioner about the letter.

The Superintendent of Schools reported to the Board of Education under date of February 28, 1942, that he had suspended petitioner because her services as a teacher "are unsatisfactory" and attached to the report the charges of "conduct unbecoming a teacher" and suggested a trial on the charges (Abst. 20). No facts were stated in the charge or report. The Board of Education approved the report (Abst. 19-20) and ordered a trial.

On April 1, 1942, petitioner was served with a copy of the charges made by the Superintendent as follows:

> "I charge that Rose K. Joyce is guilty of conduct unbecoming a teacher in the Chicago Public Schools for following reasons:
>
> "1. That she made un-American statements in her class room derogatory to the United States Government. 2. That she wrote a letter to a former student of hers who failed to register in accordance with the Selective Service Proclamation of the President of the United States, congratulating him on his 'courageous and idealistic stand.' "

The findings of the Committee show no cause for Dismissal.

The matter proceeded to hearing and testimony was taken on May 14, 21 and 22. The Board of Education sustained the findings of the Committee and by resolution adopted them.

First: As to the charge of making un-American statements in the class room derogatory to the United States Government the Committee erroneously treated the statement of matters of historical nature and illustration, made by petitioner as a teacher of history in a class room, as statements of fact made to her *out of character* to her pupils.

Second: As to the letter in question written to her former pupil the finding is no stronger than the charges. The letter was purely personal and was sent under seal by United States postage. Obviously it never reached David Nyvall, being intercepted by the F.B.I. and given to his father (Abst. 126). It contains an inference only and in nowise is unbecoming a teacher in the public school. It bore no odiom when explained.

The finding concerning the letter is as follows:

> "That she wrote a letter to a former student on February 17, 1942, the day following the former student's failure and refusal to register in accordance with the Selective Service Proclamation of the President of the United States and the provisions of the Selective Service Act, congratulating him on his 'courageous and idealistic stand,' wishing him success, and stating that 'you and others who take the same stand are the hope of America,' notwithstanding the fact that she knew that all male persons between the ages of 20-45 who had not previously registered were required under the law to register." (Abst. 132-133).

The finding is contrary to Board's evidence.

Petitioner explained that her purpose in writing to her former pupil was that she felt sorry for a boy she knew; that it was not that she had sympathy with boys who re-

fused to register but that she was in sympathy particularly with boys she had had in class and knew (Abst. 120).

Under examination as a witness called by the Board of Education as one of its own witnesses petitioner said she did not congratulate David on his refusal to register but that she congratulated him on his courageous and idealistic stand and his attitude, what he thought about war (Abst. 59).

Notwithstanding the obviously innocent interpretation to be placed normally upon the letter the Board presumed to understand the letter as advocating resistance to the Draft, a conclusion neither fair, nor logical.

The Viewpoint of Appellate Court.

The Appellate Court in passing upon the record decided to rest the affirmance of the judgment of the trial court solely upon the charge that petitioner had written the letter in question to David Nyvall.

The court noted the testimony as to what was said by petitioner in the history classes on December 8, 1941, but seemingly considered the evidence on that charge did not warrant the dismissal order of the Board. The court obviously concluded that class room discussions on a highly exciting question arising immediately upon the Pearl Harbor incident was too controversial to furnish a basis for holding that petitioner was guilty of conduct unbecoming a teacher. That was an era, as we know, when few wanted to listen to philosophical observations, and slowness to condemnation was liable to be looked upon as un-American conduct.

As to the testimony concerning the class room statements made in the character of teacher the opinion says:

> "However, in view of our conclusion that the letter to Nyvall was indefensible and constituted cause for her dismissal, we consider it unnecessary to discuss the testimony adduced upon the hearing as to other charges or to decide whether the findings in respect thereto are sustained by the record." (Abst. 159).

As the Appellate Court of Illinois rested its judgment of affirmance solely upon the letter written to petitioner's former pupil David Nyvall, we set out the basis upon which such finding must rest.

The Appellate Court remarked that petitioner argued that the "letter did not constitute cause for removal and that the Board of Education replied that it was for the Board to determine what constitutes cause" (Abst. 157).

The opinion then states:

> "Plaintiff (petitioner) takes the position that being a citizen as well as a teacher, she was entitled to freedom of speech, and therefore it was perfectly proper for her to write the letter as well as to make the statements attributed to her by her students which the committee found as an additional justifiable cause for dismissal." (Abst. 158).

After discussing the questions raised by the contentions the Court concludes:

> "We think the board was fully justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools, and having jurisdiction of plaintiff as an employee of the board, it had the right to determine whether her conduct constituted cause for dismissal" (Abst. 138).

Jurisdiction to review said judgment.

The Supreme Court of Illinois is the highest tribunal of the State of Illinois, and by its denial of said petition for leave to appeal the judgment of the Appellate Court of Illinois became final, and the writ of certiorari of this Court to review said judgment, if allowed, issues direct to said Appellate Court of Illinois, First District, Chicago, Illinois (*Chesapeake & O. R. Co.* v. *Mikas*, 280 U. S. 102, reversing 249 Ill. App. 446; *Minneapolis K. & Co.* v. *Rock*, 279 U. S. 410, reversing 247 Ill. App. 600; *Davis* v. *Aetna Acceptance Co*,, 293 U. S. 328, reversing 273 Ill. App. 628).

The decision of the Appellate Court of Illinois that the expressions in the letter in question were not protected by the constitutional guaranty of freedom of speech, and guaranty against the taking of property without due process of law, presents Federal questions which this court may review by certiorari, by virtue of Section 237(b) of the Judicial Code (28 U. S. C. A. Sec. 344).

It is contended that the decision made by the Appellate Court of Illinois to the effect that the private, controversial letter written by petitioner to one of her former students, not as teacher but as a private citizen, which neither she nor the student publicized, was a sufficient cause for dismissal of petitioner as a teacher, violated one of the privileges and immunities of citizens of the Unted States, *i.e.*, the right of freedom of speech guaranteed by the First Amendment to the Constitution of the United States.

The Applicable Statutes of Illinois.

The applicable school laws of Illinois provide that a teacher, after serving a probationary period of three years, may not be arbitrarily discharged, but can be dismissed only for cause. The law (Ill. Rev. Stat. Ch. 122, Par. 186, Sec. 161) is as follows:

> "No teacher or principal who has or shall be appointed by said board of education shall (after serving the probationary period of three years specified in Section 138 of this act) be removed except for cause, and then only by a vote of not less than a majority of all members of the board, upon written charges presented by the superintendent of schools, to be heard by the board, or a duly authorized committee of the same, after thirty days notice, with copy of the charges, is served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making defense thereto. At the request of any party such hearing shall be public. The action and decision of the board in the matter shall be final. Pending the hearing of such charges the person charged may be suspended as by the rules of the board may be prescribed: Provided, however, that in the event of acquital such person shall not suffer any loss of salary by reason of the suspension."

The proceeding before the Board of Education did not require any formal pleadings and the evidence was taken upon the informal charge made. But in the hearing of the charges the question of freedom of speech was a subject of discussion (Abst. 95, 100, 101, 106, 123, 124).

The Charges Were Without Subject Matter.

In the petition to the Circuit Court of Cook County for a writ of certiorari to bring up the record of the Board of

Education for review it was urged that the action of said school board operated to deprive petitioner of property without due process of law (Abst. 7); that because of the failure of the written charge filed with the Board of Education to allege any sufficient cause to dismiss plaintiff from her said employment, the finding and decision of the Board of Education was without jurisdiction. That the said finding, decision and order violated the provisions of the constitution of Illinois which provides that "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of this liberty * * *" (Section 4, Artice II, Constitution of Illinois, 1870) (Abst. 13). Also that said finding, decision and order of said Board of Education violated the 1st section of the Fourteenth Amendment of the Constitution which provides that "No state shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." (Abst. 13).

Questions Presented.

I.

Whether a private letter written by a High School teacher to a former pupil, intercepted and publicized by third persons, which has an innocent interpretation and which reflects no moral turpitude, or lack of enduring character, in the writer can be made a cause for an order of dismissal by a Board of Education.

II.

Does the freedom of speech guaranty, as one of the privileges and immunities of a citizen of the United States, protect a public School teacher from dismissal for having written a letter which does not reflect a mentality inconsistent with standards of character required in teachers of youth.

III.

Is petitioner deprived of property without due process of law where the complaint against her upon which the challenged judgment rests specifies no cause for dismissal.

IV.

Is petitioner deprived of due process of law where the Court affirms a judgment which in effect denies the right of freedom of speech.

Reasons for Allowance of Writ.

I.

The question here presented is not a local one for it affects the whole profession of teaching, in this, that petitioner, a talented and highly esteemed High School teacher, has had her right to teach distroyed by a ruling which gives as an alleged cause for dismissal a higher value than the right of freedom of speech guaranteed by our Constitution.

II.

From a reading of this record it is obvious that there was no real cause to dismiss petitioner as a teacher other than the willingness of public officials to act upon nothing more substantial than suspicion, and obvious war nervousness, and her property right in her chosen profession has been destroyed by a proceeding without substance.

III.

The action of the Board of Education and of the Appellate Court of Illinois, in sustaining its action, not only has denied the right and privilege of free speech, it has asserted that a teacher in a public school who wrote a private letter to a former pupil, congratulating him upon his view point against war, displays such a character as to unfit her for service as a teacher in public schools; *i. e.*, that the writing of such a letter is cause for dismissal from the service, notwithstanding the constitutional guaranty of freedom of speech and against arbitrary destruction of property rights.

IV.

It is thought that the expression of ideas stated either in private correspondence, or speech, cannot be made the cause of dismissal of a school teacher where the teacher has not offensively or ostentatiously publicized the statements even though the ideas expressed may not coincide with those of members of the Board of Education and where it is obvious that the entertainment of the ideas expressed do not *ipso facto* disqualify the speaker or writer from being a school teacher.

The Appellate Court therefore decided that the constitutional guaranty of freedom of speech did not protect petitioner from dismissal as a teacher when grounded upon her private communication to her former pupil, for the publicity of which neither she, nor the boy, were in anywise responsible.

The Opinion Below.

The opinion of the Appellate Court of Illinois, First District is reported as *Rose K. Joyce* v. *Board of Education,* 325 Ill. App. 543.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, 43 Stat. 927, 28 U. S. C. A., Sec. 344(b).

The date of the final order of the Supreme Court of Illinois, denying petition for leave to appeal, is September 12, 1945 (Abst. 161).

On December 8, 1945, Mr. Justice Murphy entered an order extending the time within which to file this petition to December 29, 1945.

Errors Relied Upon.

The Board of Education erred in sustaining the changes preferred and in dismissing petitioner from the service.

The Circuit Court of Cook County erred in refusing to quash the record of the Board of Education of the City of Chicago and erred in quashing the writ of certiorari.

The Appellate Court of Illinois, First District, erred in affirming the judgment of the Circuit Court of Cook County.

Prayer.

Wherefore petitioner prays that this court allow this petition for certiorari and grant the writ of certiorari directed to the Appellate Court of Illinois, First District, Chicago, Illinois, to bring up the records in this cause here to review the decision of the Board of Education of the City of Chicago, the Circuit Court of Cook County and the judgment affirming the same by the Appellate Court of Illinois, First District.

ROSE K. JOYCE,
Petitioner

By ODE L. RANKIN,
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Attorneys for Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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BRIEF.

Jurisdiction to Review.

The judgment here sought to have reviewed became final in the Appellate Court of Illinois for the First District thereof when the Supreme Court of that State on September 12, 1945, denied leave to appeal. By subsequent orders this Court extended the time to file petition for certiorari herein to January 5, 1946.

The jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code, 43 Stat. 927, U. S. C. A., Sec. 344 (b).

Opinion, where found.

The opinion of the Appellate Court of Illinois, First District, is reported as *Joyce* v. *Board of Education*, 325 Ill. App. 543, and appears at Abstract page 152.

The Applicable Statute of Illinois.

The applicable school laws of Illinois provide that a teacher, after serving a probationary period of three years, may not be arbitrarily discharged, but can be dismissed only for cause. The law (Ill. Rev. Stat. Ch. 122, Par. 186, Sec. 161) is as follows:

> "No teacher or principal who has or shall be appointed by said board of education shall (after serving the probationary period of three years specified in Section 138 of this act) be removed except for cause, and then only by a vote of not less than a majority of all members of the board, upon written charges presented by the Superintendent of Schools, to be heard by the board, or a duly authorized committee of the same, after thirty days notice, with copy of the charges, is served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making defense thereto. At the request of any party such hearing shall be public. The action and decision of the board in the matter shall be final. Pending the hearing of such charges the person may be suspended as by the rules of the board may be prescribed: Provided, however, that in the event of acquittal such person shall not suffer any loss of salary by reason of the suspension."

STATEMENT.

This petition asks this Court to review the record of dismissal of a talented and efficient High School teacher of history made upon charges of controversial statements involving the war in the emotional period following the Pearl Harbor attack and the declaration of war.

Class room comments on history made on Monday, December 8, 1941 were the basis of one charge against petitioner.

A private letter written by petitioner about six weeks later to one of her former pupils congratulating him upon certain remarks he was said to have made about war, characterized it as a "courageous and idealistic stand" on the war situation (not publicized by either petitioner or her pupil, but intercepted by the F. B. I., and later publicized), formed the basis of the second charge.

The Board of Education based its order of dismissal on both charges, but the Appellate Court of Illinois made no finding as to the class room statements, remarking that the testimony of the students conflicted, and stating that in view of the Court's conclusion that the character of the letter to petitioner's former pupil "constituted cause for her dismissal," the Court did not "decide whether the findings (of the Board) in respect thereto are sustained by the record." (Abst. 159).

Observing a news article in a morning paper concerning statements that David Nyvall, one of her former pupils, had made concerning war and that David was under arrest for failing to register on February 16, 1942, petitioner wrote the controversial note to her former pupil, stating:

> "Dear David: Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation; war, which in reality is mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce." (Abst. 60).

This letter was sent by U. S. mail addressed to Nyvall personally at his home address. It was intercepted by the F. B. I. and given to David's father who lived at a different address. There is no evidence that David ever saw the letter.

On the trial of the charges the letter was produced by the Superintendent of Schools.

Who publicized the letter was not shown by the Superintendent of Schools on the trial nor how it happened to reach the notice of the press, but the letter was produced by the Superintendent of Schools at the trial.

About ten days after its date a newspaper reporter called on petitioner while she was teaching at school and asked her if she had written a letter to Nyvall and questioned her about it. On the following day papers carried a story about the letter and immediately following that publicity, petitioner was suspended by the Superintendent of Schools on general grounds of conduct unbecoming a teacher; later the charges on which she was tried were filed as to the letter, and as to the statements made by petitioner in her history classes the day after Pearl Harbor.

The news article as it appeared in some city papers was so written as to convey the impression that the congratulations were upon the refusal of Nyvall to register. One

paper, however, gave an interpretation closer to the fact and said that the congratulations were on the display by Nyvall of his convictions (Abst. 127).

Petitioner's Record as a Teacher was Excellent through the years.

Petitioner graduated from Hyde Park High School in 1921; attended the University of Chicago until 1924; in Chicago Normal College to June 1925; commenced teaching in elementary grades in 1926; in 1932 began high school teaching at Marshall High School; in 1935 went to Hyde Park High School, where she taught history until suspended in February 1942 (Abst. 91). The school records of her teaching show that for the first year her services were "Satisfactory" and from 1927 to and including 1942 the record in each year shows "Excellent" (Abst. 88-89). In 1936, on sabatical leave, petitioner took a course at Loyola University where she was given a master's degree (Abst. 91).

In June 1941 the Superintendent of Schools wrote petitioner a letter congratulating her upon her teaching methods and thoroughness and stating, among other complimentary remarks, "You are not only instructing your students you are inspiring them." (Abst. 92).

ERRORS TO BE ARGUED.

The Board of Education erred in sustaining the order of suspension made by the Superintendent of Schools and in dismissing petitioner from the service.

The complaint did not show any cause for dismissal of petitioner and the action taken by the Board of Education under it deprived petitioner of her property right in her status as a teacher without due process of law.

The action of the Board of Education was taken in violation of petitioner's constitutional right to freedom of speech.

Petitioner's right under the First and Fourteenth Amendments to freedom of speech and due process of law were violated by the orders and judgments of the Board of Education, the Circuit Court of Cook County, and the Appellate Court of Illinois.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Illinois statutes make school teaching a career and after three years of successful probation a teacher attains a status that can only be destroyed for legal cause; and it is contended that the causes alleged for dismissal of petitioner have no substance in fact and furnish no justification, and the evidence adds nothig, but detracts therefrom; that the statements attributed to petitioner are protected by the constitutional provisions guaranteeing freedom of speech and due process of law.

The judgment of the Appellate Court of Illinois is challenged upon the ground that it destroys the teaching career of petitioner upon a charge so lacking in evidentiary support as to deny to petitioner her constitutional right to freedom of speech and to have due process of law.

ARGUMENT.

I.

The innuendo contained in the charge made, that the Nyvall letter congratulated him upon his refusal to register for Selective Service is a distortion of its plain and obvious meaning.

The innuendo contained in the charge made against petitioner in the writing of the Nyvall letter is that she was guilty of seditious utterances. The Superintendent of Schools did not put it in so many words but the cross examination of petitioner conducted by its counsel (Abst. 106-125) shows that that was the objective of the trial.

The findings of the Board of Education are not expressed in the language of sedition but that is the innuendo of its findings.

The Appellate Court of Illinois, however, pointedly says that petitioner encouraged Nyvall to violate the law and wished him success in his efforts to refuse to register, which in effect says the letter was a seditious utterance.

But if this record is thoughtfully read it is seen that a letter of sympathy to a former student was first construed by news reporters to be seditious and from there on it rolled up like a snow ball gathering additional odiom as it legally progressed.

If the letter is put in its proper setting and traced through from its writing to the Appellate Court opinion we will see that the impetus given the deductions of the news reporters carried through to the end.

The charge as to the writing of the Nyvall letter was that petitioner was "guilty of conduct unbecoming a teacher of the Chicago Public Schools for the following reasons:

> "2. That she wrote a letter to a former student of hers who failed to register in accordance with the Selective Service Proclamation of the President of the United States, congratulating him on his 'courageous and idealistic stand.'" (Abst. 21),

which is a distortion of the plain language of the letter. The letter contains no such innuendo. The letter says:

> "Allow me to congratulate you on the courageous stand you have taken on the *war situation; war which in reality is mass murder* * * *." (Abst. 59). (Italics ours.)

The letter clearly shows that the reference was to what was said by Nyvall about war generally and not about the Selective Service. The letter, upon its face, as is to be seen, bears no such interpretation. The letter refers to the stand taken on the "war situation; war, which in reality is mass murder."

Petition explains her letter.

There was no testimony given to interpret, or explain the meanings of the expressions in the letter, beyond that given by petitioner herself who was called by the Superintendent of Schools as a witness against herself, and as his own witness. Under his examination before the Board committee petitioner stated that she did not congratulate Nyvall upon his refusal to register, but upon his courage in standing up for what he thought was right, his courage, and his idealistic views (Abst. 59, 118, 126).

The findings of the Board follow the distortions in the charge.

The findings of the Board of Education however did not follow the evidence given in explanation but adopted the innuendo, without directly so saying, that is, that the letter congratuated Nyvall on his failure to register and that petitioner wrote the letter for that purpose nowithstanding her knowledge of the provisions of the Selective Service Act. The finding distorts the letter and contradicts the evidence.

The Opinion of the Appellate Court exaggerates the prior distortion, and develops the innuendo into a statement of fact.

The opinion of the Appellate Court expands the distortion of the Nyvall letter and says that petitioner was familiar with the Act and knew Nyvall was required to Register on February 16, yet:

> "Nevertheless she congratulated him on what she described as a 'courageous and idealistic stand,' thus encouraging him to violate the law and wished him success in his efforts to refuse to register, expressing the sentiment that other boys 'who take the same stand are the hope of America.' She should have seen that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation whom she was inviting and encouraging to violate the law." (Abst. 158).

The Appellate Court states in its opinion as a fact that David Nyvall "publicly announced that he would refuse to register on the day fixed by the President's proclamation," (Abst. 158), but no such statement attributed to Nyvall appears in the record.

The Appellate Court then on that conception of the evidence, gave it as its opinion that the Board of Education was:

> "Justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools and having jurisdiction of plaintiff as an employe of the Board it had the right to determine whether her conduct constituted cause for dismissal." (Abst. 158).

Noting that petitioner was contending that the constitutional right to freedom of speech protected her in the writing of the letter, the Appellate Court answered:

> "Plaintiff (petitioner) takes the position that being a citizen as well as a teacher, she was entitled to freedom of speech and therefore it was perfectly proper for her to write the letter as well as make the statements attributed to her by her students which the committee found as an additional justifiable cause for dismissal." (Abst. 158.)

Guilt was assumed, not proven.

The Appellate Court of Illinois, therefore, read into the letter words, statements and sentiments not found in the record, which are contrary to the record, and in opposition to most reasonable interpretations of the letter, and logical explanations of its contents by petitioner; which explanations and meanings were introduced by the Superintendent of Schools himself, supposedly in support of his charges against petitioner, but which in fact support petitioner's contentions.

And so we see a letter of sympathy from a teacher to her former pupil, in words congratulating him upon an idealistic stand which he was said to have taken upon war, growing from an honest thought crescendo, as it passed from one tribunal to another, until finally construed to be

sedition itself, and the writer condemned as unworthy to pursue the career she has so honorably established, and worthily pursued.

The charge is so lacking in substance and the letter so distorted in construction that the judgment based upon it cannot be said to be the product of due process of law.

The expression of an honest thought, opinion or speech, cannot, by such distortion, be carried beyond the protection of the First Amendment so as to destroy the right of petitioner to pursue her chosen career.

Due process requires substance in a charge.

The Illinois Statute contemplates that the charge against a teacher should show a valid cause, *i. e.*, it should state facts from which it may be seen that cause for dismissal exists. Inasmuch as the charges here involved the right of freedom of speech and to have due process of law there must be here more than mere sufficiency of form, there must be accompanying substance.

Due process of law presupposes a real issue to be decided, a legal charge made, a fair trial and a calm judgment. Due process contemplates a trial that does not reflect war fever, prejudice and hysteria.

It is now settled that the due process clause of the Fourteenth Amendment applies to the protection of freedom of speech guaranteed by the ~~Fifth~~ First Amendment as against state action. (*Whitney* v. *California*, 274 U. S. 357, 373; *Douglas* v. *Jeannette*,, 319 U. S. 157, 162; *Jamison* v. *U. S.*, 318, U. S. 413, 414).

The legal situation here is parallel to that in *Hartzel* v. *U. S.*, 322 U. S. 680, where it appeared that Hartzel was charged with writing certain articles with seditious intent and where the government made no proof other than the face of the documents which did not contain any reference to recruiting, enlistment or draft whatever. There it was held the charge was not proven by the face of the documents only.

Here the Nyvall letter has no reference to registration and the evidence negatives any innuendo that it did have.

II.

The action of the Board of Education destroyed the teaching career of petitioner in violation of her rights to due process and freedom of speech.

School teaching was a life's career to petitioner, Rose K. Joyce.

As Rose S. Kelly, petitioner graduated from Hyde Park High School in 1921, studied four years at the University of Chicago, one year at Chicago Normal College and a year on sabatical leave at Loyola University. In 1936 she was married and continued her career as Rose K. Joyce.

Petitioner commenced teaching in elementary classes in 1926. From 1927 to and including her suspension her record is marked "Excellent." (Abst. 89). Only a few months prior to her suspension the Superintendent of Schools wrote her a letter, carbons of which were sent to the District Superintendent, and to the principal of the Hyde Park High School, highly complimenting her upon her work.

This highly successful career was destroyed effectually by the action of the Board of Education, and the action of the Circuit and Appellate Courts.

The charge was not proven.

The Appellate Court obviously concluded that the statements made by petitioner in class room discussions as a teacher of history were not to be questioned where made in her character as teacher, and chose to put their judgment upon the letter writing charge. We thereupon give specific attention to the Nyvall letter charge.

The Nyvall letter was a private communication, not a public statement. It was not publicized by the pupil to whom addressed. For that reason the charge must be limited to such reflection as that letter casts upon the character of the petitioner. There is nothing else in the record that reflects upon her ability, character, patriotism or loyalty to her native country, or its institutions.

There is an innocent interpretation to the Nyvall Letter.

There is an entirely innocent interpretation to be put upon the Nyvall letter, and the familiar rule is that, where conduct is susceptible of two interpretations the innocent one is to be taken. The presumption prevails that conduct is innocent. The whole logic of the situation is that the subject of petitioner's letter was war. The article in which Nyvall was quoted was not produced by the Superintendent of schools but the statements made about it show that *War* was the subject matter and not registration for service in war. Under cross examination petitioner said:

> "I understood that's what the boy believed war was—as I said in my letter—'war, which is in reality mass murder.' I think his stand in believing that war

> was mass murder is idealistic. He might have gotten these idealistic tendencies from Becker's Modern Hisory, if he took modern history at Hyde Park. Becker expressed such ideas." (Abst. 119.)

If two constructions could be given to this letter the fact that one has the atmosphere and ring of innocence requires that it be so construed.

There is nothing in the letter that points to any unfitness, or immorality, disloyalty to her country, or lack of proper appreciation of petitioner's status as a High School teacher, which can be held to be a cause for dismissal from service and destruction of petitioner's career.

It is clear that petitioner had a right to write the letter in question to her former pupil. When properly understood it had an innocent aspect, and did not constitute cause for dismissal from service.

To make a letter cause for dismissal from service it would have to evidence such moral turpitude, disgraceful conduct, or mental condition as to destroy the right to teach.

The long and honorable service, deemed excellent upon the records, and personally complimented by the Superintendent of Schools, far outweighs the distorted construction put upon the letter.

The First Amendment to the Federal Constitution as well as the Fourteenth give protection to petitioner's rights to freedom of speech and due process of law which she here invokes.

III.

There was no legal cause for dismissal of petitioner from service.

Cause for dismissal of a teacher who has that status under the Illinois Statute must be something substantial affecting the competency, qualification or character of petitioner that would render her an unfit person to continue as a public school teacher.

Here the only thing shown against petitioner is a letter congratulating a former pupil upon his viewpoint as to war. It was private. It was not publicized by petitioner but by some unauthorized person. It has an innocent interpretation to the benefit of which petitioner was entitled but to which she was not accorded.

The long, honorable and excellent service rendered, plus the innocent construction to be placed upon the letter, was a sufficient answer to the charges; and they should have been dismissed.

Cause for removal must be good in law and fact.

Cause for removal from office is said to be something detrimental to the discipline and efficiency of the service or which law and sound public policy recognize as good cause for no longer occupying the position. (*Murphy* v. *Houston*, 259 Ill. App. 385.)

Cause for removal is some personal conduct, or fact, rendering incumbent's further tenure harmful to public interest. (*State* v. *Kansas City*, 257 S. W. 197, 200.)

Where an officer holds for a fixed term, and is removable for cause only, it is essential to a valid removal that the

charges be legally sufficient. (*Smith* v. *Board of Education*, 264 Ky. 150, 157.)

In 22 R. C. L. p. 571, sec. 822, the rule is stated as follows:

> "The word cause in a statute authorizing the removal of officers for cause means legal cause and not any cause which the board authorized to make such removal may deem sufficient. It is implied that they cannot be removed at mere will of those vested with power of removal or without any cause. It must be a cause relating to and affecting the administration of the office and must be restricted to something of a substantial nature directly affecting the rights of the public."

The charges as made stated no facts and the proofs made supplied no facts evidentiary of any guilt or of any disqualifying nature.

IV.

War hysteria is responsible for the charges against petitioner.

It can be seen from a casual view of this record that the fever of war was running high when this case was heard. The long cross examination of petitioner as to her ideas and beliefs is evidence of the attitude of the Board members (Abst. 106-125). The pictures run in the public press and the distorted constructions put upon the Nyvall letter, and those of petitioner in explanation, reflect the attitude of intolerance of the Board, the press and public to any conservative views. The view of the Appellate Court is that the fact that such a letter was written, however innocent petitioner's intentions may have been, is sufficient cause for dismissal.

The fact is that the letter was only expressing the then prevailing, and the present existing, idea of millions concerning war and which now the society of the world is seeking to outlaw, and for which the men who started that unprovoked war are now being tried and executed for their mass murders.

Current history is being made around the world upon the theory that wholesale slaughter of human beings in racketeering wars are mass murders. Deaths caused by defensive warfare may not merit the legal phrase of murder, but the pawns of war are entitled to speak their own viewpoint under our type of government and our Constitution, without being imprisoned or deprived of their property for so doing.

But when the excitement of war is on the rule is to classify any conservative thought as seditious.

Here current opinion and war ideas are responsible for the dismissal of petitioner in violation of the basic rights guaranteed by the First and Fourteenth Amendments and this Court should take the case to protect those rights.

Conclusion.

It is therefore respectfully suggested that the questions here urged are not idle, nor frivolous, but substantial; that the action of the Board of Education of Chicago and the Circuit and Appellate Courts of Illinois affirming that action have operated to deprive petitioner of her career as a teacher in violation of her constitutional right of freedom of speech and without a substantial charge against her, so that she has been deprived of her career without due process of law.

Wherefore it is respectfully suggested that in the interests of justice, the Writ of Certiorari should be granted as prayed.

Respectfully submitted,

Ode L. Rankin,
Maximilian J. St. George,
Counsel for Petitioner.

(6)

JAN 26 1948

Supreme Court of the United States

October Term, A. D. 1947

No. [redacted]

[redacted]

Petitioner,

vs.

BOARD OF EDUCATION OF [redacted]
CHICAGO, a Body Politic [redacted]

Respondent.

STATEMENT [redacted]
AND [redacted]
IN [redacted]
[redacted]

[redacted]

Petitioner,
[redacted]
Attorney for Petitioner.

Of Counsel:
[redacted]
[redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 717

ROSE K. JOYCE,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, a Body Politic and Corporate,

Respondent.

STATEMENT BY RESPONDENT OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE THE COURT:

Respondent, Board of Education of the City of Chicago, a body politic and corporate, respectfully presents to the Court the following matters and grounds making against the jurisdiction of the Supreme Court of the United States of the petition of Rose K. Joyce for a writ of certiorari directing the Appellate Court of Illinois, First District,

Chicago, Illinois, to certify to this Court the record in the case of *Rose K. Joyce* v. *Board of Education of the City of Chicago,* to review the decision of the Board of Education of the City of Chicago, the Circuit Court of Cook County, and the judgment affirming the same by the Appellate Court of Illinois, First District.

STATEMENT OF THE CASE.

The proceeding with reference to which certiorari is sought was a complaint filed August 14, 1942 in the Circuit Court of Cook County, Illinois, against the Board of Education of the City of Chicago, wherein Rose K. Joyce sought a writ of certiorari to review an order of the Board of Education of the City of Chicago removing her as a teacher in the public schools of Chicago where she taught history after a full hearing upon charges filed against her by the Superintendent of Schools (R. 129-134).

Petitioner was found guilty by the Board of Education of conduct unbecoming a school teacher in the public schools of Chicago in that she made un-American statements in her classroom derogatory to the United States government, stating in her classroom (1) that the United States had the attack on Pearl Harbor coming to it, (2) that Japan had every right to declare war on the United States, (3) that the United States was wrong in limiting immigration of the Japanese, (4) that the Japanese should be permitted to become American citizens, (5) that the United States was wrong in declaring war on Japan, (6) that the government was wrong in its attitude toward Japan, (7) that the government was wrong in its attitude toward war, (8) that Hitler was attempting to establish a democracy in Europe and that the United States and Great Britain were trying to prevent it, (9) that the

United States was always trying to put something over on other countries, and (10) that Stephen Decatur's toast, "My country! in her intercourse with foreign nations, may she always be right; but my Country, right or wrong" is wrong and dangerous and that the students should not believe in it or follow it (R. 133).

Petitioner also was found guilty of conduct unbecoming a school teacher in that she wrote a letter to a former student on February 17, 1942, the day following the former student's failure and refusal to register in accordance with the Selective Service Proclamation of the President of the United States and the provisions of the Selective Service Act, congratulating him on his "courageous and idealistic stand" and wishing him success, and stating that "you and others who take the same stand are the hope of America," notwithstanding that she knew that all male persons between the ages of 20 and 45 who had not previously registered were required under the law and proclamation to register (R. 132).

Petitioner in her brief in support of her petition for writ of certiorari, under the heading "Statement" (p. 3), and under the heading "Petitioner's Record as a Teacher" (p. 5), attempts to inject into the litigation questions wholly unrelated to the charges filed against her. No question of educational qualifications of petitioner was involved in the lower tribunal, nor was it in issue in the trial court or in the Appellate Court. The matter of petitioner's educational background is wholly unrelated to the charges filed against her.

The question presented to the State courts was whether there was any evidence in the record to sustain the charge that this petitioner was guilty of conduct unbecoming a teacher.

The statute pertaining to the Board of Education of the City of Chicago provides for the procedure to be followed in connection with the removal of a teacher who had served her probationary period of three years (Ill. Rev. Stats., 1941, Ch. 122, Par. 186, Sec. 161). (R. 3-4)

The trial court after examining the record in this cause found that the Board of Education had jurisdiction, that the Board's findings were based on substantial evidence and showed cause for removal, and that the Board proceeded legally and in accordance with the essential requirements of the statute for the removal of teachers on charges preferred against them, and dismissed the writ of certiorari (R. 146). This action of the trial court was affirmed by the Appellate Court of Cook County, First District (R. 151). Petition for leave to appeal denied by the Supreme Court of Illinois September 12, 1945. The only contention now made by petitioner is that the acts complained of did not constitute cause for dismissal, and that because of the First and Fourteenth Amendments to the Constitution she had a right as a teacher to make the statements which we have heretofore enumerated to her students in her classroom and that her actions in commending a former student in refusing to register for the draft in February, 1942 as required by law and in making statements to the press publicizing her commendation of such position were proper. She asserts that the Board's action in dismissing her as a teacher under such circumstances deprived her of a property right in her status as a teacher and her constitutional right to freedom of speech.

In her statement she now characterizes the letter as a "private" one to a former pupil, merely congratulating him upon certain remarks he made about the war, characterized his actions as a "courageous and idealistic stand" on the war situation, and claiming that neither she nor the pupil publicized it.

The record in this case does not support such statement, for she testified, "I knew he was in trouble because he did not register. I knew that conscientious objectors, after their registration, had a right under the law that they were conscientious objectors. Yet I wrote him, 'Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation'" (R. 118); "I believe a letter from a teacher to a former pupil who refused to register under the Selective Service Act was doing everything she could to win the war" (R. 120). Similar statements appear at R. 119.

The boy had publicly announced at a prior time that he would not register on February 16, 1942. Petitioner knew that he had refused to register, for she testified, "I just gathered from the newspapers that he had refused to register because he didn't believe in war and that he was a pacifist" (R. 119). She wrote him February 17, 1942, the day following his refusal and failure to register as required by law (R. 59). She granted interviews to newspaper reporters about a week after the letter had been written and told them that she thought the boy had courage in standing up for his convictions and that she congratulated him for having courage to stand up for what he thought was right (R. 126). She read her own statements in about three papers the next day (R. 127). On February 28, 1942, after her statements with regard to her letter appeared in the public press, the Superintendent preferred the charges against her (R. 19-20).

ARGUMENT.

I.

The Board and the Appellate Court of Illinois determined this case upon non-federal grounds adequate to sustain the judgment.

Neither the findings of the Board (R. 131-134) nor the judgment of the Appellate Court (R. 152-159) depend on the decision of any federal question. They are based solely on non-federal grounds.

The Appellate Court states the issue presented by the record thus (*Joyce* v. *Board of Education*, 325 Ill. App. 543):

> "Although plaintiff urges nine separate grounds for reversal, the principal questions presented and stressed on oral argument were: (1) whether the statutory requirements for removal of a teacher were sufficiently followed and complied with; and (2) whether the findings of the general committee that she was guilty of conduct unbecoming a teacher, were supported by the evidence and justified her dismissal for cause" (R. 154).

It is apparent that the Appellate Court in determining the issue was considering merely questions of local law and not federal law and decided the case on non-federal grounds. After reviewing each of the provisions of the statute with reference to removal of teachers (Ill. Rev. Stats. 1941, Ch. 122, Par. 186, Sec. 161), and showing that each provision was strictly complied with, the Appellate Court concluded (R. 156):

"Under the circumstances we are of opinion that

the board proceeded in compliance with the provisions of the law with reference to the removal of a teacher, and that it had jurisdiction of the party and the subject-matter."

The second non-federal ground is thus stated by the court (R. 157):

"The findings of the general committee, which were approved, concurred in and adopted by the board, and which were held to constitute sufficient ground for dismissal, were predicated in part on the letter which plaintiff wrote to a former student about two months after Pearl Harbor, as follows: 'Dear David, Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation—war which is in reality mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce.' Plaintiff argues that this letter did not constitute cause for removal, to which defendants reply that it is for the Board to determine what constitutes cause. In *Murphy* v. *Houston,* 250 Ill. App. 385, Mr. Justice Matchett, speaking for the court, said that it was for the commission to determine what is cause for removal, but that it may not make an arbitrary and unreasonable rule in this respect, and then defined cause to mean 'some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his not longer occupying the place.' The rule as laid down is in harmony with Throop on Public Officers (Book III, ch. XVI), *City of Chicago* v. *Condall,* 124 Ill. App. 64, *Heaney* v. *City of Chicago,* 117 Ill. App. 405, *Joyce* v. *City of Chicago,* 120 Ill. App. 398, affirmed 216 Ill. 466, and *City of Chicago* v. *Gillan,* 124 Ill. App. 210. The question as to who shall determine what constitutes cause has frequently been presented to the court, and the rule to be deduced from the authorities is that where the statute is silent as to what constitutes cause, the right to determine the question is in the tribunal having jurisdiction of

the particular officer or employee. *Kammann* v. *City of Chicago,* 222 Ill. 63; *Murphy* v. *Houston, supra.*"

Petitioner contends that the writing of a letter by her to a former student who refused to register in accordance with the Selective Service Proclamation of the President of the United States issued in accordance with the provisions of the Selective Training and Service Act and in that letter congratulating him on his "courageous and idealistic stand", wishing him success, and stating that "you and others who take the same stand are the hope of America", the contents of which letter were publicized in the daily newspapers of Chicago after the reporters had interviewed petitioner and the making of the statements in her classroom set forth in the findings of the committee, did not constitute cause for removal.

It is the long settled Illinois law that cause for removal is something which the law and sound public opinion recognize as a good cause for the person no longer being permitted to occupy the position or place of employment. *Murphy* v. *Houston,* 250 Ill. 385, 394; *City* v. *Condell,* 124 Ill. App. 63, 73; affirmed 224 Ill. 595; *Heaney* v. *City,* 117 Ill. App. 405, 410; *City* v. *Gillen,* 124 Ill. App. 210, 211; *Joyce* v. *City,* 216 Ill. 466, 470; *Kammann* v. *City,* 222 Ill. 63, 65; Throop on Public Officers, Book III, Chapter XVI.

It is also the long established Illinois law that where the statute is silent as to what constitutes cause, as in the instant case, the right to determine such question is in the tribunal having jurisdiction of the particular officer or employee. *Murphy* v. *Houston,* 250 Ill. App. 385, 394; *Kammann* v. *City of Chicago,* 222 Ill. 63, 65.

II.

Where the determination of a state court is upon non-federal grounds adequate to sustain the judgment, this court has no jurisdiction to review.

It has long been established by the decisions of this Court, commencing with the case of *Klinger* v. *Missouri*, 80 U. S. 257, 263, that even where the state court judgment rests upon two grounds, one of which is federal and the other non-federal in character, this Court's jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment. This rule has been reiterated in a long line of cases since that time, among which are *Arkansas Southern Railroad Co.* v. *German National Bank*, 207 U. S. 270, 275, 276; *Enterprise Irrig. Dist.* v. *Farmers Mut. Canal Co.*, 243 U. S. 157, 164, 165; *Municipal Securities Corpn.* v. *Kansas City*, 246 U. S. 63, 69; *Petrie* v. *Nampa and M. Irrig. Dist.*, 248 U. S. 154, 157; *McCoy* v. *Shaw*, 277 U. S. 302, 303; *Fox Film Corp.* v. *Miller*, 296 U. S. 207, 210.

The Appellate Court in the case at bar examined the law on the local question of whether the Board under the statute had jurisdiction of the party and the subject-matter; whether the statute under which the petitioner was dismissed gave the Board the power to determine what constituted cause for removal; and whether under local law the cause for removal as found by the Board constituted good cause for a teacher no longer being permitted to continue to teach in the public schools of Chicago. The court decided that the Board had jurisdiction, that the Board under the statute had the power to determine cause, that the cause as found was good cause and that there was evidence to support the Board's findings.

The Board's finding and the court's decision rest

squarely upon non-federal grounds which are independent and adequate to support the state court's judgment and therefore the Supreme Court of the United States should decline to take jurisdiction.

III.

The Appellate Court correctly determined the local law and correctly held that the teacher's (petitioner's) conduct constituted cause for dismissal.

The Appellate Court in reviewing the charges against the petitioner and the findings of the Board concluded that her acts constituted cause for removal and that the Board was justified in dismissing her. In this regard it said (R. 157-158):

> "It will be noted, of course, that when the charges were preferred against plaintiff by the superintendent, the United States was engaged in a war with Japan, precipitated by the dastardly acts of that country of December 7, 1941, now commonly referred to as 'Pearl Harbor.' We were not only fighting Japan in the West but engaged in war with Germany and Italy in the East. Loyal Americans approved the action taken by our representatives in Congress on December 8, 1941, declaring war on our enemies, and we all shared the feeling that if the war was to succeed, the support and encouragement of every individual was necessary. Certainly, it was incumbent upon teachers, who mould the minds of the young, to display the proper patriotic attitude. Plaintiff takes the position that being a citizen as well as a teacher, she was entitled to freedom of speech, and therefore it was perfectly proper for her to write the letter as well as to make the statements attributed to her by her students, which the committee found as an additional justifiable cause for dismissal. In answer to this argument defendants point out the commonly known fact that under the Selective Training and Service Act of 1940 it

became the duty of every male citizen of the United States between the ages of 18 and 65 to present himself for and submit to registration in such manner as should be determined by the rules and regulations of the Act; and that by Proclamation of the President, male persons between the ages of 20 and 45 who had not previously registered, were required to do so on February 16, 1942. David Nyvall, a former student of plaintiff, publicly announced that he would refuse to register on the day fixed by the President's proclamation, and on the day after Nyvall was required to register but refused, plaintiff wrote him the letter hereinbefore set forth. She was, of course, familiar with the Act and knew that Nyvall was included among those who were required to register on February 16; nevertheless, she congratulated him on what she described as a 'courageous and idealistic stand,' thus encouraging him to violate the law, and wished him success in his efforts to refuse to register, expressing the sentiment that other boys 'who take the same stand are the hope of America.' She should have foreseen that the incident would provoke public indignation and *that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation whom she was inviting and encouraging to violate the law.* We think the board was fully justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools, and having jurisdiction of plaintiff as an employee of the board, it had the right to determine whether her conduct constituted cause for dismissal." (Italics ours.)

Petitioner here contends that her conduct and the letter she wrote on February 17, 1942 were misconstrued by the press, the Superintendent of Schools, the committee that heard the charges and the defense thereto, the Circuit Court of Cook County, and the Appellate Court of Illinois; that the letter she wrote was distorted; that the findings of the Board followed the distortion in the charge;

that the evidence did not support the conclusions of the Board; and that the Appellate Court exaggerated the alleged distortions. She says her letter was an innocent one of sympathy and was first construed by news reporters to be seditious and from there on it gathered additional odium.

However her actions may be characterized, the fact remains that her actions were such as to require the superintendent of schools, in the discharge of his duties as head of the Chicago public schools, to prefer charges against her as her conduct was such that rendered her continuance in the employment of the Board as a teacher detrimental to the service.

Petitioner tries to minimize the class room conduct of the teacher by stressing the so-called private character of the letter and avoiding the publicity the letter received from her own interviews.

The record with reference to the letter is as follows: under the Selective Training and Service Act of 1940 it was the duty of every male citizen of the United States and every male person residing in the United States who on the day or days fixed for the first and any subsequent registration was between the ages of 18 and 65, to present himself for and submit to registration at such time and place and in such manner and in such age group or groups as should be determined by the rules and regulations provided by the Act (U.S.C.A., Title 50, App. Sec. 302). By Proclamation No. 2535 of the President of the United States, male persons between the ages of 20 and 45 who had not previously registered were required to do so on February 16, 1942.

Nyvall, a former student of petitioner, publicly announced that he would refuse to register on the day fixed

in the President's proclamation. February 17, 1942, the day following Nyvall's refusal to register, petitioner wrote him stating "Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation; war, which is in reality mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce" (R. 59-60). Petitioner testified that she was familiar with the Act and knew that all male persons were required to register; knew that all persons who failed to register were subject to punishment (R. 58); that she knew that he was in trouble because he did not register (R. 118); that she knew that conscientious objectors were required to register and after their registration they had certain rights under the law as conscientious objectors. With this knowledge she testified further, "Yet I wrote him 'Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation'" (R. 118); "I just gathered from the newspaper that he had refused to register because he didn't believe in war and that he was a pacifist" (R. 119). It requires no argument to show how great a damage could be done by a high school teacher with such mental attitude, in charge of boys of draft age at a time when this country was at war. Should a teacher be permitted to remain as a teacher who makes the following statements as to her belief: "I believed that I was doing everything in my power to help win the war by congratulating the boy who refused to register because he has an objection to war. I believe I was doing what I thought was right to win the war" (R. 119). "I believe a letter from a teacher to a former pupil who refused to register under the Selective Service Act was doing everything she could to win the war" (R. 119).

Much publicity had been given in the press to the conduct of Nyvall at that time. The attention of the Superintendent of Schools and the Board was not drawn to this letter until a week after it was written, at which time she granted interviews to newspaper reporters and told them that she had written such a letter to Nyvall (R. 126).

The record in this case clearly supports the conclusions of the Appellate Court with reference to the letter when it held "She should have foreseen that the incident would provoke public indignation and that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation, whom she was inviting and encouraging to violate the law. We think the Board was fully justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools, and having jurisdiction of plaintiff as an employee of the Board, it had the right to determine whether her conduct constituted cause for dismissal."

In *McDowell* v. *Board of Education*, 172 N. Y. S. 590, 104 Misc. 564, it was held that a teacher who was a Quakeress and opposed to war stated that she did not believe a teacher was under special obligation to train her pupils to support the government in its measures for carrying out the war against the German government, and that court held (p. 592): "It is of the utmost importance to the state that the association of teacher and pupil should tend to inculcate in the latter principles of justice and patriotism and a respect for laws." The court pointed out that her dismissal was not because she was a Quakeress but because it simply had been found that certain views and beliefs which she declared were based upon her religion prevented her from properly discharging the duties she assumed.

Whether the teacher teaches in New York or Chicago, if she is unwilling to cooperate with the constituted authorities and instead encourages a former student to disobey the law and makes statements against the government of her country in her class she should be dismissed.

In *Foreman* v. *School District No. 25,* 81 Ore. 587, 159 Pac. 1155, it was held that a teacher who taught her pupils disloyalty to the government, among other things that the government under which she and they lived is "rotten to the core," constituted good cause for removal.

It is the long established Illinois law that where there is evidence fairly tending to show the guilt of the petitioner the action of the lower tribunal is final and not reviewable on certiorari.

The record filed in this case, and the transcript of evidence taken at the hearing in support of the charges and in defense thereto, clearly show the petitioner was guilty of the charges. The Illinois law is well established that the only purpose of the state court in examining the record is to determine whether there was *any* evidence in the record fairly tending to sustain the order of dismissal. If there is any evidence to sustain the order of dismissal the court will not review the order on the ground that the inferior tribunal wrongfully removed petitioner from her position. *Carroll* v. *Houston,* 341 Ill. 531, 534-536; *Hopkins* v. *Ames,* 344 Ill. 527, 531; *People* v. *Lindblom,* 182 Ill. 241, 244, 5 R. C. L. 265. In the case at bar the overwhelming weight of the evidence introduced supports the finding of the Board that the petitioner was guilty of conduct unbecoming a teacher.

Ten students from various classes of petitioner testified as to the statements made in her classroom (R. 23-56).

While there was some conflict in the testimony there was sufficient testimony in the record to support a finding that she made the statements charged, in her classes. Under the Illinois law the court will not weigh the evidence, for that is not the purpose of the writ of certiorari. The court will examine the record only to determine whether there was any evidence tending to prove the charges made. *Murphy* v. *Houston,* 250 Ill. App. 385, 393.

Respondent has previously discussed the evidence with reference to the letter. The Appellate Court, after a full review of all of the testimony, decided that there was substantial evidence to support the findings and that the Board had jurisdiction of the subject-matter and the parties and that there was cause for removal within the meaning of the state statute (R. 158).

The findings of fact by the state courts will not be reviewed by this court on writ of certiorari.

We have heretofore pointed out that the state courts have held that there was substantial evidence to support the findings of the Board in dismissing the petitioner as a school teacher. Under such circumstances this court has held that the ordinary rule is that question of fact will not be made the subject of inquiry by this Court on writs of error to the state courts or certiorari. Where the findings are concurred in by the state trial and appellate courts this Court will not sit to retry issues of fact thus heard and determined by the properly constituted tribunals of the state having jurisdiction of the subject. *Thomas* v. *Texas,* 212 U. S. 278, 281; *Barrington* v. *Missouri,* 205 U. S. 483, 484-485; *Miller* v. *Guasti,* 226 U. S. 170, 171; *Kerfoot* v. *Farmers and Merchants Bank,* 218 U. S. 281, 288; *Aetna Life Insurance Co.* v. *Dunken,* 266 U. S. 389, 394.

IV.

Dismissal of petitioner as a teacher on the grounds found by the Board and sustained by the state courts does not violate the petitioner's right of freedom of speech guaranteed by our constitution.

It is contended by petitioner that war hysteria was responsible for the charges against and the dismissal of petitioner in violation of her right of free speech guaranteed by the First and Fourteenth Amendments to the Constitution. Her position is that she as a citizen and teacher during war time had the right to make the derogatory and unpatriotic statements in her class, heretofore discussed; to write the letter applauding the stand of her draft dodging former pupil and to publicly announce her endorsement of his stand, because the Constitution guarantees freedom of speech. She cites no authority to support such statement.

This Court has held that when the nation is at war, many things that might be said in peace time are such a hindrance that their utterance will not be endured and no court could regard them as protected by any constitutional right. *United States* v. *Pelley,* 132 F. (2d) 170, certiorari denied, *Pelley* v. *United States,* 318 U. S. 764, rehearing denied 318 U. S. 801; *United States* v. *Brown,* 132 F. (2d) 170, certiorari denied, *Brown* v. *United States,* 318 U. S. 764, rehearing denied 318 U. S. 801; *United States* v. *Fellowship Press,* 132 F. (2d) 170, certiorari denied, *Fellowship Press* v. *United States,* 318 U. S. 764, rehearing denied, 318 U. S. 801.

As pointed out by the Appellate Court in the case at bar, petitioner's former student, Nyvall, publicly announced he would refuse to register February 16, 1942, as

required by the Proclamation of the President. Petitioner was familiar with the requirements of the law and knew Nyvall was among those who were required to register. Nevertheless, February 17, 1942, the day following his failure to register, petitioner wrote him congratulating him on what she described as a "courageous and idealistic stand," thereby encouraging him to violate the law and wishing him success in his efforts, expressing the sentiment that other boys "who take the same stand are the hope of America" (R. 158). Then a week later she granted interviews to newspaper men informing them that she had written such a letter congratulating the boy for having the courage to stand up for what he thought was right (R. 126). The Appellate Court further points out that "She should have foreseen that the incident would provoke public indignation and that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation whom she was inviting and encouraging to violate the law" (R. 158).

The action taken by the Superintendent of Schools on February 28, 1942 in suspending petitioner pending the hearing of the charges and the findings of the Board after a full hearing, did not constitute war hysteria but was the result of careful deliberation to determine whether a teacher under their employ had made such statements in her classroom and had written such letter and if so whether she should be permitted to continue to teach in the public schools of Chicago. Neither was the Appellate Court moved by war hysteria. Neither was the Supreme Court of Illinois moved by war hysteria when it denied her petition for leave to appeal on September 12, 1945 (R. 161).

While it may be conceded that freedom of speech is nat-

ural and inherent it is not absolute but is subject to restrictions and limitations. This court stated in *Schenck* v. *United States*, 249 U. S. 47, 51-52:

> "It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in *Patterson* v. *Colorado*, 205 U. S. 454, 462, * * * We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, 206, * * *. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic. * * * The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right."

In *Gilbert* v. *Minnesota*, 254 U. S. 325, this Court upheld a Minnesota statute making it unlawful to discourage enlistment in the military or naval forces and held that one who made statements in public in violation of such state statute was not protected under the freedom of speech provisions of the United States constitution, and said (p. 333):

> "It would be a travesty on the constitutional privilege he invokes to assign him its protection."

For the reasons herein set forth, we respectfully submit

that the Supreme Court of the United States should decline to take jurisdiction.

Respectfully submitted,

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CHARLES ELMORE CRO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 717

ROSE K. JOYCE,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO,
a Body Politic and Corporate

REPLY BRIEF OF PETITIONER.
(In Application for Certiorari.)

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There are but two questions in this case, the one on which the Appellate Court of Illinois rested its decision, the question of Freedom of Speech, and the other the general question of due process of law inherent in the record.

The case was narrowed down by the opinion of the Appellate Court to the one question of Freedom of Speech.

I.

Only Freedom of Speech is involved in the decision of the Appellate Court.

The Appellate Court would not say that what was said by petitioner as a teacher in her history classes at the hour of the declaration of war, as recited by highly nervous and excited students, contradicting each other with their youthful impressions and conclusions, was reliable enough to sustain the action of the Board of Education; or, if believed, could be judged out of its context when uttered in a class room by a teacher of history.

The Appellate Court in its opinion shows that petitioner claimed her right to say what was in the Nyvall letter under the constitutional guaranty. The Appellate Court says that petitioner takes the position that she is entitled to freedom of speech and that she had a right to write the letter (Abst. 158) and say that petitioner should have foreseen "that her letter if publicized, as it was" would have a demoralizing tendency, thus charging petitioner with its publication which was done by the Board itself. The court concludes that in its opinion "a teacher writing such a letter ought not to be permitted to continue teaching in public schools," (Abst. 138) and then say

> "in view of our conclusion that the letter to Nyvall was indefensible and constituted cause for dismissal we consider it unnecessary to discuss the testimony adduced upon the hearing as to other charges or to decide whether the findings in respect thereto are sustained by the record." (Abst. 159).

Only a Federal question was decided.

Thus it is seen that the Appellate Court grounded its decision squarely upon a Federal question when it held that the right to Freedom of Speech did not protect petitioner from discharge on the ground of having written the letter, and on that ground alone.

The Nyvall letter does not violate the right of Freedom of Speech.

The Nyvall letter is not vicious in nature. Petitioner only congratulated the young man because of his attitude toward war,—war in the abstract. What Nyvall had said,—and of which we all are now acutely conscious,—was that war is mass murder.

It is to be borne in mind that petitioner did not publicize the letter in question; that it was made public by the Superintendent of Schools, not petitioner; that he publicized it, created the public hysteria and the Board of Education then discharged petitioner for the effects created by its own Superintendent.

What was said in the letter was a private communication under seal. The Superintendent of Schools, or the School Board, publicized the letter and then laid charges against petitioner as if she had said the things in public, and as if petitioner had said them with all of the interpretations the respondent places upon the letter.

Petitioner did not "grant an interview" to the press as is said by opposing counsel. Respondent, or its Superintendent of Schools, gave out the letter to the press and a reporter called on petitioner at the school and asked ques-

tions of her. She testified she was surprised (Abst. 126) by the visit of the news reporter. She was not seeking publicity but the respondent was.

This is an example of how unfair, prejudiced, and hysterical this whole proceeding was. Nothing was proven against petitioner except that she wrote the letter and mailed it under seal.

II.

What happened in class is not here involved.

What the school children related, being wholly statements taken out of the context of the history class lessons, was not considered by the Appellate Court of enough substance to place reliance upon; yet opposing counsel relate the matter in a one-sided way in great detail for its prejudicial effect. That subject is not open here for the Appellate Court did not rely upon it, and did not decide against petitioner on that charge.

Even the modification of the famous toast of Decatur which is known to every school child is considered of such importance as to condemn petitioner. She had advocated one taught to her by a distinguished educator, "My country, may she always be right. When she is right, stand by her. When she is wrong, help right her.", on the theory that Americans should not be encouraged to continue to uphold wrongs that existed in the nation's laws against racial and religious minorities (Abst. 95-96).

III.

Petitioner assumes its case.

We find the same statement echoed in the brief of opposing counsel (pp. 12-13), that is found in the Opinion of the Appellate Court (Abst. 158), to the effect that Nyvall had publicly announced that he would not register on the day fixed by the President, and that following such announcement petitioner wrote the letter in question. There is no such testimony in the record and the attempt to prejudice petitioner by such extraneous matter is wholly unfair.

In fact all there is in respondent's case is innuendo. There is only one fact with which to charge petitioner and that is that she wrote the Nyvall letter, a private letter; a letter publicized by respondent or its Superintendent of Schools, and then used as a basis for unjust charges against petitioner. All else is make-weight and build-up.

After calling petitioner to the stand and proving by her the innocent interpretations of the statements in her letter to Nyvall the respondent refuses to be bound by its own testimony and continues in its effort to destroy petitioner's career as a public teacher, by spray-gunning its innuendoes.

The prejudicial method of her trial, and the hatreds and hysteria of the era, show through the whole record and the brief of opposing counsel reflects it in emphasis.

The Board of Education changes viewpoint.

Suddenly all the great work of petitioner as an educator, loudly complimented and proclaimed by the Superintendent of Schools a few months before, is turned against petitioner. Petitioner had not changed in her method of work and her philosophy over night; she remained the same, but the psy-

chology of the members of the tribunal that tried her had changed. War had warped their attitudes and visions, and petitioner fell victim to their self-righteous war psychology.

The Board of Education itself or its officials have created this picture; they publicized the letter; they distorted its context, and they based charges upon such distortion.

IV.

The Nyvall letter does not reflect a lack of moral character or any disqualifying attitudes, or any clear and present danger from any constructions of petitioner's teaching.

The Nyvall letter in no sense reflects such a mentality as to disqualify petitioner from following her teaching career, but does reflect a high moral character when properly interpreted and understood. Petitioner had a right to say what was said in the letter regardless of all the unfavorable publicity created by respondent, and despite the groundless charges made against her by respondent and its officers.

The teacher of history, like the jurist, deals with the truth and things as they are, — they are not propagandizing. And they become targets of better criticism and denunciation in certain eras for duties well performed when the people, the masses, do not wish to hear the truth, and condemn with current mass thought.

Petitioners right to say what she did in the letter is protected by the constitutional guaranty contained in the First Amendment, — the great balance wheel of our American Way, — which she here invokes as a shield to her right to follow her chosen career.

In Thomas Collins 325 U. S. 516 it is said that any attempt to restrict freedom of speech must be justified by a

clear public interest threatened, not doubtfully or remotely but clear and present danger; and that only the gravest abuses endangering paramount interests give occasion for limiting the right; and that it is our tradition to allow the widest room for discussion and the narrowest range for restriction.

No danger is here apparent that the teaching by petitioner will in anyways be harmful to students or injurious to the morale or discipline of the school. In fact no complaint is made as to the teaching of petitioner.

Petitioner is penalized because of a supposed mental attitude.

V.

Petitioner is not charged with teaching disloyalty.

Petitioner did not teach disloyalty to the government and the cases decided in New York and Oregon, cited by opposing counsel, where teachers taught disloyalty to pupils are not in point here.

The Federal question decided.

The question here is can the Board of Education discharge petitioner because of the contents of a private letter not publicized by her and when examined has an innocent explanation; can such a letter be made the basis of a discharge for cause under the statute as against the plea of the right of Freedom of Speech under the Federal constitution.

And that is the only question upon which the Appellate Court passed.

Without substance there is no due process.

There is no practical substance to the charge against petioner or in the record of her discharge and without substance in a proceeding there is no due process of law.

Conclusion.

Wherefore it is suggested that respondent has shown nothing of consequence in opposition to the petition for certiorari and petitioner respectfully asks that the writ be awarded as prayed.

Respectfully Submitted

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